

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAUNDERS SUPPLY COMPANY
INC., SAUNDERS SUPPLY
COMPANY, HOWELL FAMILY
LTD. PARTNERSHIP;
TURPIN A. SAUNDERS,
PARKER D. HOWELL III,
and SAMUEL B. HOWELL,

Defendants.

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) Civil Action No. _____
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) Judge _____
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CONSENT DECREE

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Civil Action No. _____

Judge _____

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Saunders Supply Company, Inc. Superfund Site in Chuckatuck, Suffolk County, Virginia ("the Site").

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do

not admit any issue of fact or law or any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States has reviewed the Financial Information submitted by the Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section VI.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Financial Information" shall mean those financial documents identified in Appendix A.
- h. "Interest" shall mean interest at the rate specified for interest on investments of

the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendants.

k. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 7, 2002, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

l. "Plaintiff" shall mean the United States.

m. "Property" shall mean property owned by one or more of the Settling Defendants in the deeds attached hereto as Appendix B.

n. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

o. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

p. "Settling Defendants" shall mean Saunders Supply Company, Inc., Saunders Supply Company, the Howell Family Ltd. Partnership, Turpin A. Saunders, Parker D. Howell III, and Samuel B. Howell and their officers and directors to the extent that the alleged liability of the officer or director is based on its status and in its capacity as an officer or director of Settling

Defendants and not to the extent that the alleged liability arose independently of the alleged liability of Settling Defendants.

q. "Site" shall mean the Saunders Supply Company, Inc. Superfund site, encompassing approximately 7.3 acres, located at 5969 and 6019 Godwin Boulevard and a portion of down gradient property in Chuckatuck, Suffolk County, Virginia, and generally shown on the map included in Appendix C.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment and to carry out the other requirements of this Consent Decree to address their potential liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Within 30 Days of entry of this Consent Decree, Settling Defendants shall pay to the EPA \$380,000.00, plus an additional sum for Interest on that amount calculated from June 6, 2003 through the date of payment.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number 03P6, and DOJ Case Number 90-11-3-07774. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern

District of Virginia following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Saunders Supply Company, Inc. Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date or if Settling Defendants fail to comply with the Institutional Controls in Paragraph 26(b), Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$5000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 Days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA

Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 03P6, and DOJ Case Number 90-11-3-07774, and shall be sent to:

United States Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

c. At the time of any and each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

14. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site. This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 23 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendants' ownership or operation of the Site (a) if after signature of this Consent Decree by Settling Defendants there is handling, transportation, treatment, storage or disposal of a hazardous waste or a hazardous substance or a solid waste at the Site other than the activities being conducted in accordance with Paragraph 26 of this Consent Decree or (b) if after signature of this Consent Decree by the Settling Defendants there is transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and
- f. liability arising from the discovery of conditions at the Site that are previously unknown to EPA or if information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the response actions taken at the Site are not protective of human health or the environment.

16. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 34, is false or, in any material respect, inaccurate.

17. Nothing in this Consent Decree is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

18. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613; or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 21 (Waiver of Claims) and Paragraph 25 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 15 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

19. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 21, the Parties expressly reserve any and all rights including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. Subject to Section IX (Reservation of Rights) in this Consent Decree, the "matters addressed" in this Consent Decree are all response

actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.

24. Settling Defendants agree that, with respect to any suit or claim for contribution brought by any of them for matters related to this Consent Decree, such Settling Defendant will notify EPA and DOJ in writing no later than 60 Days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against any of them for matters related to this Consent Decree, such Settling Defendant will notify EPA and DOJ in writing within 10 Days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 Days of service or receipt of any Motion for Summary Judgment, and within 10 Days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XII. ACCESS AND INSTITUTIONAL CONTROLS

26. Commencing on the date of entry of this Consent Decree, this Consent Decree shall supercede all previous access agreements between the United States and the Settling Defendants. If the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by Settling Defendants, Settling Defendants shall:

a. provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or its agents, consistent with Section XIII (Access to Information);
7. Assessing Settling Defendants' compliance with this Consent Decree;

and

8. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. Institutional Controls - commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property addressed by EPA's response actions, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures or operation and maintenance at the Site. In addition, Settling Defendants shall refrain from using the Site, or such other property addressed by EPA's response actions, for any purpose which may reasonably be anticipated to interfere with, obstruct, or disturb the performance, support, or supervision of the remedial measures and operation and maintenance at the Site. Unless otherwise determined to be necessary by EPA, such restrictions include, but are not limited to, the following:

1. Groundwater underlying the Property, including groundwater from either the Columbia Aquifer or the Yorktown Aquifer, shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of pumping and treating the contaminated groundwater and monitoring groundwater contamination levels in accordance with plans approved by the EPA;

c. Assignment or Transfer of Property or Interest in the Property - Reservation of Easement. In the event of any conveyance, assignment or transfer of the Property or any interest in the Property, Settling Defendants shall continue to be bound by all terms and conditions, and subject to all benefits, of this Consent Decree. In no event shall such conveyance, assignment or transfer release or otherwise affect Settling Defendants obligation to comply with all provisions of

this Consent Decree unless the United States and Settling Defendants agree and this Court enters a modification of this Consent Decree. In the event of such a conveyance, assignment or transfer, Settling Defendants shall expressly reserve in the deed or other instrument effecting the transfer an irrevocable and permanent easement which grants Settling Defendants (1) the right of access for the purposes of carrying out the obligations and restrictions under this Paragraph (Paragraph 26) of this Consent Decree; and (2) the right to carry out and enforce the obligations and restrictions set forth in this Paragraph (Paragraph 26) of this Consent Decree. Thirty (30) Days prior to such a conveyance, assignment or transfer of the Property or an interest in the Property, Settling Defendants shall provide EPA with a copy of the proposed deed or other instrument effecting the transfer and Settling Defendants shall make any related revisions to the proposed deed or other instrument effecting the transfer required by the EPA within 28 Days of its receipt of the proposed deed or other instrument. EPA's failure to require revisions within this time period shall not constitute approval of the proposed deed or other instrument effecting the transfer. Settling Defendants shall enforce the terms of any such easement reserved in this Paragraph 26(c) against all subsequent grantees of an assignment or transfer of the Property or an interest in the Property.

1. With respect to any property owned or controlled by the Settling Defendants that is located within the Site, within fifteen (15) Days after the entry of this Consent Decree, the Settling Defendants shall submit to EPA for review and approval, a notice ("Title Notice") to be filed with the Recorder's Office, Commonwealth of Virginia, or other government office where land ownership and transfer records ("Land Records") are maintained for the Settling Defendants' Property. Such Title Notice shall provide notice to all successors-in-title that Settling

Defendant's Property is part of a Superfund Site; that on September 3, 1991 EPA selected a remedy for the Site; and that potentially responsible parties have entered into a Consent Decree requiring implementation of a part of the remedy. Such Title Notice shall identify the United States District Court in which the Consent Decree was entered and shall recite the Settling Defendants' obligation to provide access and land use restrictions pursuant to Paragraph 26 of this Consent Decree. The Settling Defendants shall record the Title Notice within ten (10) Days of EPA's approval of the notice(s). The Settling Defendants shall not modify or release such Title Notice without prior written approval of EPA. The Settling Defendants shall provide EPA with a certified copy of the recorded Title Notice within ten (10) Days of recording such Title Notice.

d. Reporting Requirements - Settling Defendants shall submit to EPA two copies of written annual reports that describe the actions which have been taken toward achieving and maintaining compliance with Paragraph 26(b)(1) of this Consent Decree during the previous year ("Annual Institutional Control Reports"). Settling Defendants shall submit these Annual Institutional Control Reports to EPA by the tenth day of every January following the lodging of this Consent Decree until EPA notifies the Settling Defendants in writing that it no longer requires these reports.

27. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, each of the Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations and Settling Defendants expressly reserve all rights and defenses associated therewith.

XIII. ACCESS TO INFORMATION

29. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to potential environmental liabilities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

30. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.

2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following:

- 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record;
- 4) the name and title of each addressee and recipient; 5) a description of the subject of the record;
- and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

32. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records now in any of their possession or control, or which come into any of their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 Days prior to the destruction of any such records, and, upon request by EPA or DOJ, each of the Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant

asserts such a privilege, such Settling Defendant shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

34. Each Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

XV. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ and Settling Defendants, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07774)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Benjamin M. Cohan
Sr. Assistant Regional Counsel (3RC41)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

As to Settling Defendants:

Parker D. Howell III
Saunders Supply Company, Inc.
P.O. Box 2278
Chuckatuck Station
5881 Goodwin Blvd.
Suffolk, VA 23432

XVI. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

37. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of Financial Information submitted to EPA by Settling Defendants;

“Appendix B” are the deeds to the Site; and

“Appendix C” is the map of the Site

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

39. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree shall be void at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

40. Each undersigned representative of Settling Defendants to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

42. Settling Defendants shall identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants may substitute a new agent for service of process upon fifteen (15) Days prior written notice to the United States. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. FINAL JUDGMENT

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____, relating to the Saunders Supply Company, Inc. Superfund Site.

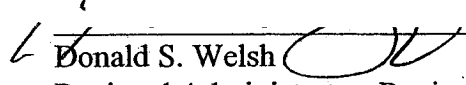
FOR THE UNITED STATES OF AMERICA


Paul J. McNulty
United States Attorney
Eastern District of Virginia


Date

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Deborah Behles
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611


Donald S. Welsh
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103


William C. Early
Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103


Benjamin Cohan
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____ relating to the Saunders Supply Company, Inc. Superfund Site.

FOR DEFENDANT SAUNDERS SUPPLY COMPANY INC.

Date: 7-30-03

Name:
Title: Pres.
Saunders Supply Company, Inc.
Address:.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David O. Ledbetter

Title: Attorney

Address: Hunton & Williams
951 E. Byrd Street
Richmond, VA 23219

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____ relating to the Saunders Supply Company, Inc. Superfund Site.

FOR DEFENDANT SAUNDERS SUPPLY COMPANY

Date: 7-30-03

Name:
Title: *Partner*
Saunders Supply Company
Address:.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David O. Ledbetter

Title: Attorney

Address: Hunton & Williams
951 E. Byrd Street
Richmond, VA 23219

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____ relating to the Saunders Supply Company, Inc. Superfund Site.

FOR DEFENDANT HOWELL FAMILY LIMITED PARTNERSHIP

Date: 7-30-03

Name:

Title: Partner

Howell Family Limited Partnership.

Address:.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David O. Ledbetter

Title: Attorney

Address: Hunton & Williams
951 E. Byrd Street
Richmond, VA 23219

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____ relating to the Saunders Supply Company, Inc. Superfund Site.

FOR DEFENDANT TURPIN A. SAUNDERS

Date: 7-30-03

Turpin A. Saunders

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David O. Ledbetter

Title: Attorney

Address: Hunton & Williams

951 E. Byrd Street

Richmond, VA 23219

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____ relating to the Saunders Supply Company, Inc. Superfund Site.

FOR DEFENDANT PARKER D. HOWELL III

Date: 7-30-03

Parker D. Howell III

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David O. Ledbetter

Title: Attorney

Address: Hunton & Williams
951 E. Byrd Street
Richmond, VA 23219

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Saunders Supply Company Inc. et al., C.A. No. _____ relating to the Saunders Supply Company, Inc. Superfund Site.

FOR DEFENDANT SAMUEL B. HOWELL

Date: 7-30-03

Samuel B. Howell

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David O. Ledbetter

Title: Attorney

Address: Hunton & Williams
951 E. Byrd Street
Richmond, VA 23219